

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

JAMES H. BEARD, JR.,)	
)	
Plaintiff,)	
)	
VS.)	No. 16-2262-JDT-cgc
)	
LOAMMA SMITH, ET AL.,)	
)	
Defendants.)	

ORDER ADOPTING REPORT AND RECOMMENDATION FOR DISMISSAL,
CERTIFYING AN APPEAL WOULD NOT BE TAKEN IN GOOD FAITH
AND DENYING LEAVE TO APPEAL *IN FORMA PAUPERIS*

On April 19, 2016, Plaintiff James H. Beard, Jr. filed a *pro se* complaint on the form used for commencing actions pursuant to 42 U.S.C. § 1983 (ECF No. 1), accompanied by a motion to proceed *in forma pauperis* (ECF No. 2). On April 21, 2016, U.S. Magistrate Judge Charmiane G. Claxton granted leave to proceed *in forma pauperis*. (ECF No. 5.) Plaintiff filed a motion for appointment of counsel on May 3, 2016. (ECF No. 6.)

On January 18, 2017, Magistrate Judge Claxton issued a Report and Recommendation (“R&R”) in which she recommended dismissing the case *sua sponte* pursuant to 28 U.S.C. § 1915(e)(2)(B) and denied the motion to appoint counsel as moot. (ECF No. 7.) Objections to the R&R were due on or before February 6, 2017. *See* Fed. R. Civ. P. 72(b)(2); *see also* Fed. R. Civ. P. 6(a), (d). However, Plaintiff has filed no objections.

As noted by the Magistrate Judge, Plaintiff’s complaint, affidavit, and accompanying exhibits consists of 113 pages. The gist of his allegations is that the various Defendants, most of whom are involved with Alcoholics Anonymous and other programs for treatment of substance

abuse, are conspiring to force individuals who are trying to achieve sobriety “to depend on drug dealers, the emotionally perverted, and the criminally insane.” (ECF No. 1 at 2.) He further alleges “[t]he defendants have used coercion, intimidation, verbal and physical attacks, and drugged those who resist their leadership and demands.” (*Id.*)

In the R&R, Magistrate Judge Claxton determined that Plaintiff’s complaint fails to comply with Federal Rule of Civil Procedure 8(a)(1) and that his rambling, incoherent allegations fail to state any claim under 42 U.S.C. § 1983, which applies only to persons and entities acting under color of state law. Plaintiff has not alleged that any Defendant acted under color of state law or deprived him of any federal constitutional or statutory right. No alternative basis for this Court’s jurisdiction is evident from the complaint.

The Court finds no error in Magistrate Judge Claxton’s conclusions. Therefore, the R&R is ADOPTED, and this case is DISMISSED as frivolous and for failure to state a claim, pursuant to 28 U.S.C. § 1915(e)(2)(B)(i)-(ii).

It is CERTIFIED, pursuant to Federal Rule of Appellate Procedure 24(a), that any appeal in this matter by Plaintiff is not taken in good faith. Leave to appeal *in forma pauperis* is, therefore, DENIED. Accordingly, if Plaintiff files a notice of appeal, he must also pay the full \$505 appellate filing fee or file a motion to proceed *in forma pauperis* and supporting affidavit in the Sixth Circuit Court of Appeals.

The Clerk is directed to prepare a judgment.

IT IS SO ORDERED.

s/ **James D. Todd**
JAMES D. TODD
UNITED STATES DISTRICT JUDGE